# The Corporation Journal

THE CORPORATION TRUST COMPANY
37 Wall Street, New York
Affiliated with
The Corporation Trust Company System
15 Exchange Place, Jersey City
Organized 1892.

Boston, 511 Exchange Bldg. (Corporation Registration Company)
Chicago, 112 W. Adams Street
Pittsburgh, 1202 Oliver Bldg.
Albany, 158 State Street (The Corporation Company)
Washington, D. C., 501 Colorado Bldg.
Philadelphia, 1429 Land Title Bldg.
Portland, Me., 281 St. John Street
St. Louis, Federal Reserve Bank Bldg.
Wilmington, 486 duPont Bldg. (Corporation Trust Co. of America)

*No. 74. Vol. 3. December, 1917 Pages 105-124*

## DOMESTIC CORPORATIONS

### ARKANSAS.

**LIABILITY OF HOLDERS OF VOTING TRUST CERTIFICATES.** Purchasers in the open market of corporate bonds accompanied by a proportionate amount of voting trust certificates are not liable as subscribers for unpaid stock to assessment for the benefit of creditors upon bankruptcy of the corporation. Clark v. Johnson, 245 Fed. 442.

**A DIRECTOR OF AN INSOLVENT CORPORATION** will not be allowed to buy up its debts at a discount and prove them against the corporation as a creditor for their face value. But claims so purchased by a partnership, an interest in which was owned by a wife of a director, are collectible on a basis of their full face value under the circumstances of the instant case. Horner v. New South Oilmill, 197 S. W. 1163.

### CALIFORNIA.

**AN OFFICER ACTING IN A FIDUCIARY CAPACITY** is required to make full and complete disclosures to his superior officer and the directors as to all business transacted by him in behalf of the corporation. A breach of this obligation is ground for discharge and the rescinding of his contract of employment. Oliphant v. Home Builders. 168 P. 700.

**DELAWARE.**

**OPTION TO SUBSCRIBE TO UNISSUED CAPITAL STOCK IS VALID.** The Protective Company agreed to furnish to the Home Life Ins. Co. of America, a Delaware corporation, money to acquire new business and in return therefor the Protective Company was given a perpetual and exclusive right to subscribe to the stock of the Insurance Co. at par, the Insurance Co. being liable to return all money advanced with interest. The Court of Chancery of Delaware holding such an agreement valid says, "One who acquires shares of stock of a corporation after the corporation, by action of its officers, directors and stockholders has given to a stranger an exclusive right to take and pay for at par all of the unissued shares of the company cannot assert as against the company, or the holder of the option, the general pre-emptive right of shareholders of a corporation. * * * As between the corporation and the holder of the option such a contract is valid, and can be held invalid only at the instance and for the benefit of a stockholder who asserts his right to take the stock, and whose right has been impaired by the giving of the option. If, however, before a particular person became a shareholder another person has acquired an option inconsistent with the pre-emptive right, then the latter is subservient to the former right." Kingston v. Home Life Ins. Co. of America, 101 A. 898.

**"A DELAWARE RECEIVER** may now sue anywhere to enforce an assessment when made. This is surely a consequence of the act of 1913 (27 Del. Laws, p. 79; Revised Code, par 3884) which in effect makes a receiver a quasi assignee and so removes the limitation of an ordinary receiver to the territorial limits of the jurisdiction wherein he was appointed." John W. Cooney Co. v. Arlington Hotel Co. 101 Atl. 879.

**"A DELAWARE CORPORATION CANNOT MAKE A SUBSCRIPTION CONTRACT WHICH WILL FREE THE SUBSCRIBER FROM THE STATUTORY LIABILITY,** for that statute is notice to all who make such contracts and is read into and becomes a part of every stock subscription contract. The fundamental principle is that shares of stock in a corporation are a substitute for the personal liability of partners, and the liability to pay for stock taken up to the par value is a fund for the benefit of creditors of the company, and whoever takes shares of stock of a Delaware corporation assumes that liability for the benefit of creditors in case of insolvency of the company." John W. Cooney Co. v. Arlington Hotel Co. 101 Atl. 879.

**SERVICES TO BE RENDERED NOT VALID CONSIDERATION FOR ISSUANCE OF STOCK.** The Arlington Hotel Company was incorporated under the General Corporation Law of the State of Delaware. Its certificate of incorporation provided for $3,000,000 of common and $2,500,000 of preferred stock and contained the following statement, "The common stock shall be non-assessable

full paid." At the first directors' meeting a resolution was passed authorizing the issuance of the entire common stock to three persons as a remuneration "for services rendered and to be rendered by them." The preferred stock was then sold and shares of common given as a bonus. The enterprise failed, the property was sold by lien creditors, and receivers were appointed who filed a petition in chancery for authority to collect from stockholders money unpaid on their stock. The Court of Chancery reviewing the case at length says: "It may be true as between the corporation and a stockholder, that shares may be issued for services to be performed, though even that is doubtful. 'Work done' does not include promotion services performed before incorporation. But when the interests of creditors are affected, 'work done' should not include prospective labor as an equivalent for money in exchange for shares of stock. By a strict construction 'work done' does not include work to be done, or work done and to be done." "There was no valuation by the directors of the services of the promoters. * * * It is readily seen that $3,000,000 of stock was such a gross and, therefore, unlawful overvaluation that counsel did not pretend that there was an appraisement by the directors, or if they had made such a valuation that any sensible person would have accepted their judgment. In the absence of such proof it is now open to this court to say that the directors have not determined that $3,000,000 of stock was issued for work done, and that no value was given by the stockholders to the company for the common stock. Of course, it is obvious that the stock was to be bonus stock, issued without value. Therefore, it is impossible to escape the conclusion that the shares of common stock have not been paid for in whole or in part." John W. Cooney Co. v. Arlington Hotel Co., 101 Atl. 879.

**IOWA.**

**AUTHORITY OF AGENT.** An employe of the Chicago, Milwaukee & St. Paul Railway Company was injured while neither engaged in the business of the company nor on its premises. The assistant engineer in charge of construction work was notified, a physician summoned by him and an operation performed. The Supreme Court holding the action of the assistant engineer in engaging a physician to have been beyond the scope of his employment and the railroad company therefore not liable says: "The board of directors of a railroad company, strictly speaking, are its agents and representatives; but, in a practical sense, such board in its relations to the public are the corporation itself. Unless conferred by the articles of incorporation, all authority to act for the corporation must emanate from the board of directors, and before it can be bound by contracts of agents, officers, or employes, it must be made to appear that power to enter therein has been conferred on such agent, officers, or employes by said articles, or given by the board of directors or governing body, either expressly, impliedly, or by ratification. Having designated agents, however, the corporation will be bound by whatever they may do or omit to do within the scope of their employment." Carson v. Chicago, M. & St. P. Ry. Co., 164 N. W. 747.

## MISSISSIPPI.

**STOCKHOLDERS LIABLE AS PARTNERS.** Section 930, Code of 1906, requires that "every corporation shall, within thirty days after organization, make report thereof to the Secretary of State," etc., and further provides that "should such report be not made within the time required, the charter granted shall be null and void, and all persons doing business thereunder shall be deemed and held to be partners in the business and liable as such." This includes not only the officers and directors but also all stockholders whether they became such before or after the thirty day period. Hessig-Ellis Drug Co. v. Wilkerson, 76 S. 570.

## MONTANA.

**ANNUAL REPORT.** Section 3850, Revised Codes, as amended by the laws of 1909, requires corporations to file an annual report with the clerk of the county where the principal office is located on or before January 20th of each year. A failure to comply renders the directors individually liable. To comply with this section the Alfalfa Products Company mailed their report on January 9 but failed to have it verified as required. The clerk returned it for correction January 12. On January 16 the company returned it to the clerk but neglected to enclose filing fee. The clerk rendered a bill and the fee was paid January 23, the report meanwhile remaining in the office of the clerk. A suit was brought to enforce the individual liability of the directors on the ground that the report was not filed January 20. The Supreme Court, placing the burden of proof upon plaintiff, holds that the intent of the statute is to secure the depositing of the papers with the proper officer and the payment of the fee in advance is not necessarily required. Since the report was received by the clerk prior to January 20 and retained by him, the statute is satisfied. Minneapolis Steel & Machinery Co. v. Thomas, 168 P. 40.

## NEW YORK.

**SUBSCRIPTION TO STOCK.** The Supreme Court, Appellate Term, First Department, holds that Sec. 53 of the Stock Corporation Law, requiring 10 per cent. of the amount of each subscription to be paid by the subscriber at the time of subscribing, relates only to subscriptions made after incorporation and that subscriptions made prior to organization need not be so paid in. Rogers v. Baird, 167 N. Y. Supp. 35.

**MERGER OF CORPORATIONS.** Defendant executed and delivered a continuing guaranty to the corporation of Morse & Rogers that one H. Heinz would pay for any goods which he might purchase from the corporation from and after the date of the guaranty. Thereafter Morse and Rogers became merged with plaintiff, also a corporation, the merger being effected under Section 15 of the Stock Corporation Law which provides that the corporation resulting from the merger shall "acquire and become and be possessed of all the estate, property, rights, privileges and fran-

chises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation." The Appellate Division of the Supreme Court, First Department, sustaining plaintiff in its suit on the guaranty says, "The defendant gave his guaranty to a corporation charged with the knowledge that the law permitted the merger of that corporation with another, and the vesting in the merged corporation of all the 'estate, property, rights and privileges' belonging to its component parts. There was no assignment of the guaranty, none was made, none was required by law. By the merger it belongs to the merged corporation and is effectual." W. H. McElwain Company v. Luigi Primavera, A. D. November, 1917, not yet officially reported.

**FEATURES OF THE NEW YORK CORPORATION LAWS.** Shares may be issued without par value; voting trust agreements are authorized by statute; directors' meetings may be held outside the state; a New York corporation may hold its own stock and stock in other corporations; more than one class of stock may be issued; cumulative voting may be provided for; stock may be issued for property or for services and the judgment of the directors in that respect is conclusive in the absence of fraud; any number of purposes may be provided for and money may be borrowed without legal limit as to amount. On the other hand the organization tax is high, the annual franchise tax is also high and the method of computing it requires complicated reports. Moreover, manufacturing and mercantile companies are subject to a tax of 3% of the net income or portion thereof taxable within the state; shares with par value cannot be less than $5.00 nor more than $100; one-half the capital stock must be paid up within one year; transfers of stock in a New York corporation are subject to a transfer tax of two cents on each $100 of par value or less; one incorporator must be a resident of the state and one director must be a resident of the state and a citizen of the United States; stockholders' meetings must be held within the state; stockholders are liable for all debts due employes if notice is given within thirty days by such employes of intention to enforce such liability.

**COST OF ORGANIZATION IS AS FOLLOWS:**

Fee to State Treasurer:

1/20 of 1% on authorized capital but not less than $10. In case of shares without par value the tax is 5c for for each share.

Fees to Secretary of State:

| | |
|---|---|
| Filing charter | $25.00 |
| Recording charter 25c per folio, about | 5.00 |
| Certifying charter 15c per folio and $1.00 for seal, about | 4.00 |
| Filing certificate of payment of one-half capital stock, 25c per folio, about | 1.00 |

| | |
|---|---|
| Fees to County Clerk: | |
| Filing charter—differs in various counties—in New York County | $.25 |
| Recording 10c per folio, about | 2.00 |
| Filing and recording certificate of payment of one-half capital stock | .55 |

**TAXATION.** Corporations other than manufacturing and mercantile are required to pay an annual franchise tax based on the amount of capital stock employed in the state. If all the property of the corporation is used in business outside the state no franchise tax is paid. Manufacturing and mercantile corporations are required to pay a tax of 3% on net income proportionable to the state in accordance with provisions of the law.

**PROCEDURE FOR INCORPORATION.** A certificate of incorporation is executed and acknowledged in duplicate by three or more natural persons of full age, at least two-thirds of whom must be citizens of the United States and one of them a resident of the state. One of the original certificates is filed and recorded in the office of the Secretary of State and the other in the office of the county clerk of the county in which the principal office or place of business is located. By-laws may be adopted either by the incorporators or by the directors.

**WHAT THE CORPORATION TRUST COMPANY DOES** to assist attorneys in the incorporation and subsequent statutory maintenance of a New York corporation is briefly as follows:

At the time of incorporation it ascertains, upon request, if the name can be used, files and records the necessary papers and assists the attorney in every possible way in the organization. Approved copies of articles ot incorporation are on file in our office for reference.

It will draft and submit the articles of incorporation, by-laws and minutes of incorporators' meeting and upon approval by the attorney will furnish complete facilities for incorporation, attend to the filing of the papers, the holding of the necessary meetings and return the records completed in minute book form.

Attorneys wishing to keep complete control and supervision over the organization of New York corporations have found it extremely convenient and expedient to confer with the nearest office of The Corporation Trust Company System and to employ the services of its Albany office.

Subsequent to incorporation, The Corporation Trust Company furnishes a statutory office, furnishes rooms for holding stockholders' and directors' meetings or holds stockholders' meetings by proxy, gives timely notice for filing state reports and tax returns, and keeps counsel informed of changes in statutes affecting the corporate status.

For foreign corporations entering New York, The Corporation Trust Company drafts for approval and submits to attorneys all documents necessary to secure

authority to do business in the State. Upon approval, it attends to their filing with the proper state officials. After qualification, it supplies the statutory agent, notifies the attorney of all State reports and taxes to be paid, and forwards blanks for reports and tax assessments. A statement containing the statutory requirements for admission of foreign corporations to do business in New York will be sent upon request and without charge.

An estimate of charges can be secured at our nearest office.

**OUR FACILITIES FOR RAPID ASSISTANCE TO COUNSEL** are illustrated by a recent incident. Counsel telephoned us at 1:45 P. M. stating that he desired to incorporate a thirty million dollar New York corporation that day. The necessary funds were placed to the credit of The System's Albany office, and the information for preparing and executing the certificate of incorporation was given over long distance telephone. The certificate was executed by incorporators at Albany, was filed in the office of the Secretary of State, was recorded in the County Clerk's office at Albany and the first meeting of the incorporators was held at 4:45 P. M.

## NORTH CAROLINA.

**ISSUANCE OF STOCK FOR PROPERTY.** Defendant, one of the promoters of the A. D. Rich Co., subscribed to 82 shares of its capital stock. He purchased a stock of goods paying for it with money obtained from a bank upon his personal note. Upon the organization of the company the goods were sold to the company, the 82 shares duly issued to defendant, and his note at the bank taken up by the company. The Supreme Court, sustaining the trustee in bankruptcy of the company in an action for the subscription price of the 82 shares, holds that a stockholder paying for stock with property has the burden of showing, "that the property was taken at its true value, and that such value was approved by a board of directors, acting independently in the interest of the corporation." Goodman v. White, 93 S. E. 906.

## OKLAHOMA.

**FRAUD OF PROMOTERS.** Three of the promoters of a corporation fraudulently represented to their associates that certain property could be acquired for $25,000 and was of value in excess of that amount and thus induced them to agree to subscribe and pay for shares of stock of the corporation and authorize the purchase of the property. In fact, however, through a secret understanding between the three promoters and the vendors of the property, only $10,000 was paid by the promoters for the property. This in the opinion of the Supreme Court is conduct not in accord with the fiduciary relation occupied by promoters toward the coporration and is an infringement of the corporate rights of their associates as shareholders in the corporation. Jarvis v. Great Bend Oil Co. 168 P. 450.

**FICTITIOUSLY PAID-UP STOCK IS VOID.** Section 39, Art. 9, of the Constitution of Oklahoma provides that "No corporation shall issue stock except for money, labor done, or property actually received to the amount of the par value thereof, and all fictitious increase of stock or indebtedness shall be void." Stock certificates issued in violation of this provision are void in the hands of all holders. Lee v. Cameron (State Supreme Court, not yet officially reported).

## UTAH.

**THE PRESIDENT OF A CORPORATION IS PERSONALLY LIABLE** if by his false representations as to the financial responsiblity of the corporation a man is deceived and induced to become an agent of the corporation and suffers loss thereby. The other directors are not liable unless they knew of the representations. Since the fraud vitiates the contract, the agent can recover the reasonable value of his services, not the contract amount. Alder v. Crosier, 168 P. 83.

**SALE OF ENTIRE ASSETS.** "The board of directors of a private corporation was, by the common law, authorized to sell or otherwise dispose of the property of the corporation, subject to the limitation that it could not sell or dispose of its entire property." But under express terms of the Statutes of Utah (Section 322, Compiled Statutes 1907), articles of association may state that the property of the corporation may be sold, mortgaged, or otherwise disposed of by the directors or by the stockholders in accordance with provisions therein set forth. Pursuant to this statute, and under its charter the directors of the Alice Company in the absence of any fraud or lack of good faith and without the consent of the majority of its stockholders, were empowered to sell and dispose of all the corporation's property. Geddes v. Anaconda Copper Mining Co., 245 Fed. 225.

## VERMONT.

**FEATURES OF THE VERMONT CORPORATION LAWS.** Stock may be issued for property; the annual tax is comparatively low; directors' meetings may be held outside of the state; and an executive committee may be provided for. On the other hand, the organization tax is high; a Vermont corporation may not hold stock in other corporations except for a limited time when taken to secure a debt, unless it be stock of a domestic corporation whose business is ancillary or auxiliary, or stock of a foreign corporation organized to handle and develop the business of the domestic corporation; at least two directors must be residents of the state; stockholders' meetings must be held within the state.

**COST OF ORGANIZATION IS AS FOLLOWS:**

Fee to Secretary of State:

Organization Tax.

| | |
|---|---|
| On capital not exceeding $5,000 | $10.00 |
| On capital over $5,000 to $10,000 | 25.00 |
| On capital over 10,000 to 50,000 | 50.00 |

On capital over 50,000 to 200,000..... $100.00
On capital over 200,000 to 500,000..... 200.00
On capital over 500,000 to 1,000,000..... 300.00
On capital over 1,000,000 to 2,000,000..... 500.00
On capital over 2,000,000—$200.00 for each additional million or fraction thereof.

Franchise Tax.

On authorized capital of $50,000 or less, $10.00, each additional $50,000, $50.00; but in no case more than $50. This tax must be paid for balance of year up to January 31st next succeeding, computed for full months.

Fee to Town Clerk:

Recording charter, 7c per folio, usually $3.00.

**TAXATION.** Annual franchise tax on authorized capital of $50,000 or less $10.00; each additional $50,000, $5.00, but in no case more than $50.

**PROCEDURE FOR INCORPORATION.** Three or more persons of full age sign articles of association, which are forwarded to the Secretary of State. If approved, they are recorded in his office and the corporation thereupon becomes a "legal unit." Any three of the signers of the articles of association may call the first meeting upon seven days' notice, or without notice upon a written waiver by all the signers of the articles. At this meeting, by-laws are adopted and officers are elected. The clerk of the corporation is required to file in the office of the clerk of the town where the principal office of the corporation is located, and also to have on file in his own office, certified copies of all papers required by law to be filed with the Secretary of State. Before the corporation commences business, the president and clerk are required to make a certification under oath, stating the amount of capital paid in, which shall be filed in the office of the Secretary of State, and a certified copy thereof with the clerk of the town in which the place of business of the corporation is to be located. The president and directors assenting thereto are personally liable for debts contracted before these instruments are so recorded with the town clerk. No stock shall be issued until after there has been filed with the Secretary of State an affidavit executed by a majority of the incorporators or directors setting forth specifically (a) the amount of stock proposed to be issued; (b) the property or consideration which is to be received for such stock; and (c) that in their judgment the property for which stock is issued is actually worth in money the par value of such stock. The description of such property or consideration shall be sufficient in detail to satisfy the Secretary of State that it can be readily identified. An officer or director who issues or consents to issue shares of stock before this affidavit is filed, or who makes or consents to a false statement therein is subject to a fine of not more than $1,000, or imprisomnent for not more than 12 months, or both.

**WHAT THE CORPORATION TRUST COMPANY DOES** to assist attorneys in the incorporation and subsequent statutory maintenance of a Vermont corporation is briefly as follows:

At the time of incorporation it ascertains, upon request, if the name can be used, and furnishes the attorney with a complete set of forms for reference. copies of articles of association which have been approved, files the articles of association and assists the attorney in every way possible in the organization.

It will draft and submit the articles of association, by-laws and records of proceedings, and upon approval by the attorney will furnish complete facilities for incorporation, attend to the filing of the papers, the holding of the necessary meetings and return the records completed in minute book form.

Attorneys wishing to keep complete control and supervision over the organization of Vermont corporations have found it extremely convenient and expedient to confer with the nearest office of The Corporation Trust Company and to employ the services of its representatives in Vermont.

Subsequent to incorporation The Corporation Trust Company furnishes a statutory office, acts as custodian of stock record books, furnishes rooms for holding stockholders' meetings, or holds same by proxy, gives timely notice for filing state reports and tax returns, and keeps counsel informed of changes in statutes affecting the corporate status.

For foreign corporations entering Vermont, The Corporation Trust Company drafts for approval and submits to attorneys all documents necessary to secure authority to do business in the State. It files the necessary papers and after qualification it notifies the attorney of all State reports and taxes to be paid, and forwards blanks for reports and tax assessments. A statement containing the statutory requirements for admission of foreign corporations to do business in Vermont will be sent upon request and without charge.

An estimate of charges can be secured at our nearest office.

**WEST VIRGINIA**

**DIVIDENDS DECLARED BY STOCKHOLDERS.** Nothwithstanding Code 1913, C. 53, S 39 (Sec. 2892) providing that the board of directors alone is authorized to declare dividends, if the stockholders by common consent are permitted to participate directly in the management and control of the corporation, a dividend declared by them is a valid corporate act, and the corporation is bound thereby. The board of directors is assumed to have accepted the action of the stockholders. Thiry v. Banner Window Glass Co., 93 S. E. 958.

## ISSUE TRANSFER AND REGISTRATION OF STOCK

**NEW JERSEY.**

**COURT MAY COMPEL TRANSFER ON BOOKS OF A CORPORATION.** The Lane & Lockward Company had an authorized capital stock of $100,000 divided into 1,000 shares, 650 of which were issued. The President owned 305 shares, the Secretary 295 and the remaining 50 shares were owned by the third director. The President, endeavoring to acquire control of the company, made a secret agreement

with the holder of the 50 shares whereby he was to be given the privilege of purchasing the stock at any price offered by "outside parties." An offer to purchase the stock was made by the Secretary and duly communicated to the President who failed to exercise his option and the stock was sold to the Secretary. The President refused to sign the new certificate of stock in the name of the Secretary and a bill in chancery to compel him to do so was filed. The court, advising a decree pursuant to the prayer of the bill says, "The power of the court to compel a transfer of stock on the books of a corporation in a case of this nature has been recognized, and rests on the theory that complainant is the equitable owner of the stock and seeks by the transfer to consummate a legal title." Lockward v. Evans, 102 A. 19.

## FOREIGN CORPORATIONS

**CALIFORNIA.**

**INCORPORATION IN A FOREIGN STATE IN ORDER TO INVOKE JURISDICTION OF THE UNITED STATES COURTS.** Certain holders of California land in order to expedite its handling and sale formed a corporation under the laws of Idaho and transferred their property to it. In a subsequent lawsuit it was stipulated that a further reason for incorporation was that by so doing an opportunity was afforded to invoke the jurisdiction of a United States court, upon the ground of diversity of citizenship, in any litigation commenced by them or by any person against them. The Circuit Court of Appeals holds that this was not in and of itself sufficient to oust jurisdiction of the federal courts. "It does not appear that the incorporation was a mere subterfuge for the purpose of obtaining that benefit, or that the benefit so obtained furnished the sole or controlling reason for such incorporation. Upon the contrary, it appears that the incorporation was bona fide and for the purpose of affording a means to expeditiously handle and sell the lands in suit and avoid the inconvenience incident to an ownership and control by numerous co-owners." Doane v. California Land Co., 243 Fed. 68.

**IDAHO.**

**"A FOREIGN CORPORATION WHICH HAS ADMITTEDLY FAILED TO COMPLY** with the statutes of this state in regard to designating an agent upon whom service of summons may be had, is not entitled to urge the defense of the statute of limitations." Graham v. Brown Bros. Co. 168 P. 9.

**OKLAHOMA.**

**RIGHT TO HOLD LAND.** Session Laws 1907-08 C. 13 Art. 2 requiring every corporation doing business in the state to sell and dispose of its real estate within seven years unless the same is necessary for its business applies to foreign as well as domestic corporations and is not repealed by Session Laws 1907-08 C. 32 Art. 1. State v. Prairie Oil & Gas Co. 167 P. 756.

**PENNSYLVANIA.**

**A FOREIGN CORPORATION** duly registered in the State and having a certificate of public convenience issued by the Public Service Commission evidencing its right to do business in the State is not entitled to the use of public highways coming under the jurisdiction of the State Highway Department without a permit from that Department. In re application of the Dover-Rossville Transit Company (an opinion of the Attorney General's Department) holds that jurisdiction over roads constituting the system of State Highways is vested exclusively in the State Highway Department.

**WISCONSIN.**

**CONTRACT VOID FOR FAILURE TO QUALIFY AS A FOREIGN CORPORATION.** The Phoenix Nursery Company, an Illinois corporation, without procuring a license to transact business in Wisconsin, entered into a contract with the defendant whereby it agreed to sell him certain trees and shrubs and to plant them on his premises in Milwaukee according to plans and directions of his landscape architect. The trees as shipped were unsatisfactory and the purchaser refused to pay for them and set up as his defense to the action the failure of plaintiff to comply with the requirements of the statutes as to procuring authority to transact business in the state. The Supreme Court of Wisconsin sustained the defendant's contention and held the contract void. Phoenix Nursery Co. v. Trostel, 164 N. W. 995.

## CANADA

**(Under the editorial supervision of Davidson, Wainwright, Alexander & Elder of Montreal.)**

**MANITOBA.**

**REGULATION OF FOREIGN CORPORATIONS.** The Privy Council, in John Deere Plow Co. v. Wharton, (18 D.L.R. 353, 2 The Corporation Journal 186), held that the Province could not interfere with the status and corporate capacity of a Dominion Company so far as the said status and capacity carried with it the powers conferred by the Parliament of Canada to carry on business in every part of the Dominion:—in other words, that the Provincial Legislature has not power under the British North America Act, which is the Constitution of Canada, to pass an act requiring companies incorporated by the Dominion Parliament to be licensed or registered under the Act as a condition of carrying on business in the Province or maintaining proceedings in its courts. Part IV of the Companies Act of British Columbia, (R. S. B. C. 1911, C. 39) was, therefore, held *ultra vires* the Provincial Legislature, in this respect.

The same question has, again, recently been under judicial consideration in Manitoba (Davidson v. Great West Saddlery Co., 35 D. L. R. 526), where the Manitoba Court of Appeal divided equally upon the question as to whether part IV of the Manitoba Companies Act (R. S. M. 1913, C. 35) was in conflict with the decision in the John Deere Plow Co. case. Howell, C. J., and Cameron, J., agreed with the Trial Judge that the Province has power, under section 92 of the British North America

Act, 1867, to compel, under penalty, extra provincial corporations, including Dominion Companies, to take out a license for the privilege of carrying on business and holding land within its territory, and held part IV of the Manitoba Companies Act to be *intra vires*.

Perdue & Haggart, J. J., held to the contrary, namely, that Part IV of the Manitoba Companies Act is not distinguishable, in principle, from the legislation in question in the John Deere Plow Co. case.

The Privy Council decision, of course, governs, and the question in this case was as to the interpretation to be placed upon the terms of Part IV of the Manitoba Companies Act, in relation to the principles laid down by the Privy Council.

## TRUSTS AND MONOPOLIES

### ILLINOIS.

**SALE OF A LOSING BUSINESS.** In 1912, in a suit brought by the United States to enjoin the continuance of acts in violation of the Sherman Anti-Trust Law, the Western Newspaper Union was permanently enjoined, among other things, "from combining or attempting to combine with the American Press Association either by purchase, stock ownership, or in any other manner." For various causes the business of the American Press Association diminished so that in 1917 a petition was filed praying for a modification of the injunction quoted above and asking permission to sell its assets and business to its only competitor, the Western Newspaper Union. The U. S. C. C. A. for the seventh circuit, reversing the District Court, Northern District of Illinois, holds that a losing concern about to go out of business may without violation of the Sherman Law sell its plant as a going concern to its only competitor rather than disposing of it as junk since this is to the advantage not the injury of the public. American Press Ass'n v. United States, 245 F. 91.

## UNITED STATES SUPREME COURT

**TEXAS PERMIT TAX AND FRANCHISE TAXES IMPOSED UPON FOREIGN CORPORATIONS.** The Crane Company, an Illinois corporation, in 1905, having filed its articles of incorporation with the Secretary of State, paid a permit tax of $200 for the ten-year period prescribed by the permit act of 1889. From 1904 down to and including 1914 the company paid a yearly franchise tax, the amount increasing from $480 in 1904 to $1,948 in $914. In 1907 it was enacted both as to domestic and permitted foreign corporations that in case the capital stock of a corporation "issued and outstanding plus its surplus and undivided profits, shall exceed its authorized capital stock." the franchise tax should be calculated upon the aggregate of such amount. In the same year there was also enacted a law vastly increasing the amount of the permit tax. It was so increased that the permit for which the Company paid to the Secretary of State $200 for ten years in 1905 under the new law would have required the company to pay in order to do business in the State the sum of $17,040. Shortly before its existing permit for ten years taken in 1905 expired the Crane Company commenced a suit in the District Court

of the United States for the Northern District of Texas against the Secretary of State and the Attorney General of Texas to enjoin the enforcement by them of the statute embracing these taxes.

Injunction was issued. The United States Supreme Court has just affirmed the order of the trial court, stating that the leading case on the subject is Western Union Telegraph Co. v. Kansas, 216, U. S. 1.

The court further says that as a result of that decision, "The Supreme Court of the State of Texas, recognizing the repugnancy of the permit law here in question to the Constitution of the United States, enjoined its enforcement (Western Union Telegraph Co. v. State, 103 Texas 360), and following that ruling the legislature of the State has amended both the permit tax law and the franchise tax law now before us, presumably in an effort to cure the demonstrated repugnancy of the statutes before amendment to the Constitution of the United States. Of course, whether the amendments as adopted accomplished the purpose intended, is a matter which we are not called upon to consider and as to which we express no opinion." Looney v. Crane Co. (U. S. Supreme Court, No. 16, Oct. Term, 1917)

## TAXATION.

### NEW YORK.

**INVESTMENT TAX.** A single bond secured by a single mortgage on real property without the state does not come within the meaning of "investments" as used in Article 15 of the Tax Law as amended by Chapter 700, Laws of 1917. Opinion of Attorney General, 13 State Dpt. Rep. 113.

### PENNSYLVANIA.

**BONUS TAX.** The judgment of the lower court in the case of Commonwealth v. Schwarzchild, (Reported in Corporation Journal No. 64, Vol. 2, pg. 279) holding that a foreign corporation doing business in the State is liable to the bonus tax on the amount of capital actually employed in the State has been affirmed by the Supreme Court of the State reported in 259 Pa.

**MERCANTILE TAX.** Judgment in the case of Commonwealth v. Crew Levick reported in Corporation No. 62, Vol. 2, page 247 in which a mercantile tax chargeable against the defendant company was reversed by the Supreme Court of the United States (Crew Levick Company v. Commonwealth of Pennsylvania, October Term 1917, No. 499, not yet reported) on the ground that a state tax imposed on the business of selling goods in foreign commerce insofar as it is measured by gross receipts from merchandise shipped to foreign countries is in effect a regulation of foreign commerce or an impost upon exports within the meaning of the Federal Constitution.

## INCOME TAX.

For preceding references, see 3 Corporation Journal, page 101.

A letter from a Deputy Commissioner states that the tax on interest on tax

free covenant bonds is to be withheld by the debtor corporation and not by the bank by whose agency collection is made (p. 445.)

Additional compensation paid under an established profit sharing plan is deductible as an expense according to a letter from a Deputy Commissioner (p. 445).

A letter from the Commissioner relates to returns by foreign corporations and refund of accounts paid in excess of liability (p. 446).

According to a letter from an Acting Commissioner the transfer of a patent from one corporation to another corporation is a closed transaction (p. 447).

A letter of the Commissioner discusses deduction at the source, refunding of accounts heretofore withheld in 1917 and returns of information at the source (p. 448).

A treasury decision extends the time in which to file returns of income by non-resident alien individuals and corporations and American citizens residing or travelling abroad (p. 449).

A letter of the Commissioner relates to liability of a corporation dissolved prior to October 4, 1917, to the addition of tax imposed by the Revenue Act of October 3, 1917 (p. 449).

Determination of taxable income on sale by a corporation of its assets in consideration of bonds and common and preferred stock of another corporation is the subject of a letter by a Deputy Commissioner (p. 454).

According to a letter from the Commissioner, an asset consisting of individual profits, earned since March 9, 1913, on which income tax has been paid as earned, will be considered as an item of cost in determining profit on sale of the assets of a corporation (p. 451).

A telegram from the Commissioner states that interest upon a note, etc., proceeds of which are used to purchase dividend-paying stock is allowable as a deduction for normal and additional tax purposes (p. 452).

The United States Supreme Court has decided that alimony is not "income" nor is it a deductible item of expense (p. 453).

A letter from the Commissioner relates to a form of a qualified tax-free covenant which relieves a corporation from liability to withhold at the source (p. 454).

A Treasury Decision holds that oversight merely does not relieve from penalty for failure to file returns and that 2% is to be withheld against non-resident alien corporations on dividends paid in 1916 even though partly earned in 1915 (p. 455).

A Treasury Decision relates to the amount of income from Liberty bonds exempt from tax (p.456).

A letter from the Department of Internal Revenue relates to profit and loss resulting from an investment in stock, the receipt of a stock dividend thereon and the subsequent sale of the entire holding (p. 457).

Establishment of a calendar year basis by a fiscal year corporation is the subject of a letter (p. 458).

A Treasury Decision revises Article 40, Regulation 33 (p. 458).

A letter from a Deputy Commissioner pertains to adjusting excess depreciation charged off in previous years (p. 459).

Stock dividends resulting from a capitalization of good will is discussed in a letter (p. 459).

Correspondence with the Department relates to liability of fiduciaries under the War Income Tax and the Act of Sept. 8, 1916, as amended (p. 460).

Letters from the Department of Internal Revenue relate to continuing use of ownership certificates (p. 462) to bonuses which may be otherwise deductible are not so when "left on deposit" with the employer (p. 462) to liability of corporations in connection with returns of income for fiscal years ending in 1917 (p. 463) and to tax liability of shareholders (p. 464).

An important treasury decision relates to inventories of merchandise and of securities held by dealers (p. 465).

Dividends paid direct to shareholders of lessor corporation by lessee corporation, constitute income to the lessor, as rent (p. 466).

A further extention of the time to file returns has been granted to certain fiscal year corporations (p. 467).

A treasury decision relates to gifts as bonuses to employees of corporations, partnerships or individuals (p. 467).

(NOTE:—The page references are to our Income Tax Service, 1917, in which these rulings are printed in full.)

**SUBSCRIPTIONS TO OUR 1918 INCOME AND WAR TAX SERVICES** have been coming in rapidly this month. Many appreciative letters have been received from old subscribers. A letter which fairly represents the feeling expressed in many of them, says:—"In this connection it gives me pleasure to say that your Service has been invaluable and that we could not well get along without it. We have seen no Service that compares favorably with it in promptness, thoroughness or complete indexing and cross references. We are very glad indeed to send you renewal of our subscription."

## FEDERAL ESTATE TAX.

No rulings or regulations have been issued since our last report. See Corporation Journal, p. 102.

## MUNITIONS MANUFACTURERS' TAX.

No rulings or regulations have been issued since our last report. See Corporation Journal, p. 86.

## EXCESS PROFITS TAX.

For preceding references, see 3 Corporation Journal, p. 102.

A letter from the Commissioner relates to liability of a corporation dissolved prior to October 4, 1917, to the War Excess Profits Tax (p. 931).

A treasury decision explains the amount of income from Liberty Bonds exempt from tax (p. 932).

Method of allowing deductions is illustrated in a treasury decision (p. 933).

The terms "tangible property" and "intangible property" as used in Section 207 are construed in a treasury decision (p. 934).

Treasury decisions relate to salary allowances in the case of partnerships and of individuals engaged in trade or business (p. 934), to taxability of salaries received from a partnership (p. 935), to deductions allowed to partnerships for interest on bona fide loans by partners (p. 936), to when a return of information as to invested capital and net income for the pre-war period will not be required (p. 936) and to extending time to file certain returns (p. 937).

(NOTE.—The page references are to our War Tax Service, 1917, wherein the foregoing rulings and regulations are reported in full.)

## FEDERAL RESERVE.

### RULINGS AND REGULATIONS:

For preceding references, see 3 Corporation Journal, page 103.

Informal rulings of the Board relate to drafts drawn "on or before 90 days after sight" (p. 463) to rediscount of participation certificate (p. 563), to public service corporation paper (p. 564), to tax on promissory notes (p. 564), to stamp tax on acceptances (p. 565), to eligibility of mutual savings bank (p. 565) to state bank membership (p. 565), to method of computing discount (p. 566), and to deposits with nonmember banks (p. 566).

The law department has rendered opinions on real estate loans by foreign branches (p. 566), to applications for membership by state banks before commencing business (p. 568), and to rediscount of banks' notes given for funds to replace deposits withdrawn to purchase Liberty Bonds (p. 569).

A decision by a United States District Court holds that Federal Reserve Bank stock which is held by a national bank cannot be deducted by such national bank in making a return of the value of its own stock for the purpose of taxation (p. 570.)

(NOTE.—The page references are to our Federal Reserve Act Service, which reports all rulings and regulations of the Federal Reserve Board.)

## TRADE COMMISSION.

### RULINGS AND REGULATIONS:

For preceding references see 3 Corporation Journal, page 71.

The order to cease and desist against the Bureau of Statistics of Book Paper Manufacturers is printed in full (p. 124).

Docket of Complaints Numbers 17 to 23, inclusive, have been added (Supplementary pages 6 to 8).

(NOTE.—The page references are to our Federal Trade Commission Service, which reports the rulings.)

## SOME IMPORTANT MATTERS FOR JANUARY AND FEBRUARY.

This calendar does not purport to cover general taxes or reports to other than state officials or those we have been officially advised are not required to be filed. The State Report and Tax Service maintained by The Corporation Trust Company System sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.

| | |
|---|---|
| ALABAMA | Annual franchise tax payable January 1—Domestic and Foreign Corporations. |
| CALIFORNIA | Annual license tax due between January 1 and 1st Monday of February—Domestic and Foreign Corporations. |
| CALIFORNIA | Capital stock affidavit due between January 1st and 1st Monday of February—Foreign corporations. |
| CONNECTICUT | Annual Income Tax return, due between January 1 and April 1—Domestic and Foreign Corporations. |
| GEORGIA | Registration statement and franchise tax due on or before January 1st. |
| ILLINOIS | Annual report due during February—Domestic and Foreign Corporations. |
| INDIANA | Annual report due during January—Domestic and foreign corporations. |
| KENTUCKY | Annual capital stock report due on or before February 1st—Domestic and foreign corporations. |
| MARYLAND | Annual report due between January 1 and March 1—Domestic Corporations. |
| MICHIGAN | Annual report due in January or February—Domestic and foreign corporations. |

## SOME IMPORTANT MATTERS FOR JANUARY AND FEBRUARY.

| | |
|---|---|
| MISSOURI | Annual capital stock report due on or before February 1st—Domestic and foreign corporations. |
| MONTANA | Annual report due between January 1st and March 1st—Foreign corporations. |
| NEW HAMPSHIRE | Annual report due between January 1st and March 1st—Domestic and certain foreign corporations. |
| NEW YORK | Annual franchise tax payable on or before January 15th—Domestic and foreign corporations, excluding mercantile and manufacturing companies. |
| PENNSYLVANIA | Capital stock report } due between January 1st and Corporate loan report } February 28th—Domestic and foreign corporations.<br>Bonus report due between January 1st and February 28th—Foreign corporations. |
| SOUTH CAROLINA | Annual report due during January—Foreign Corporations. |
| SOUTH DAKOTA | Annual capital stock report due during January—Foreign corporations. |
| TEXAS | Annual capital stock report due during January—Foreign corporations. |
| UNITED STATES | Annual return for income and excess profits taxes due between January 1st and March 1st. |
| VERMONT | Application for extension of certificate of authority due between January 1st and March 31st—Foreign corporations. |
| WISCONSIN | State Income Tax due during January—Domestic and foreign corporations. |

**THE CORPORATION JOURNAL** should be kept in a binder for convenient reference. We furnish a substantial binder for $1.50.